
(2009) 06 JH CK 0017
In the Jharkhand High Court

Hifjur Rahman and Others

APPELLANT

Vs

Jaibun Nisha and Others

RESPONDENT

Date of Decision : 23-06-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2010) 5 RCR(Civil) 520

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been preferred against the order dated 22.3.2007 passed by Sub-ordinate Judge-I, Chatra, in Title Suit No. 2/2002, whereby and whereunder the learned Sub-ordinate Judge has rejected the Amendment Petition filed by the plaintiffs/petitioners under order 6 Rule-17 of C.P.C.

2. The facts in brief are set out as under: In a pending Title Suit preferred by the petitioners herein an amendment petition was filed on 1.8.2006 on behalf of the plaintiff/petitioner under order 6 Rule 17 read with Section 151 C.P.C. for a proposed amendment which is set out as under:

SCHEDULE -I

Item No. 1.

A. That in Schedule "B" (Viz suit land), at the end of Khata No. 13, plot No. 19 area 2.18 acres and before Khata No. 19 plot No. 45 area 0.41 "Plot No. 97 area 0.31 acre and plot No. 100 area 0.31 acre" be inserted.

B. That in Schedule (B), in Khata No. 19, plot No. 180 area 0.40 acre be corrected as "0.47 acres"

C. That in Schedule "B", under Khata No. 37, plot No. 789, 799, 809 be

corrected as plot Nos. "78, 79, 80" respectively.

D. That in Schedule "B" under Khata No. 41 plot No. 175 area "0.10 acre" be corrected as Area "0.06 acre". Likewise in Schedule "B", under Khata No. 43 plot No. 132 area "0.161/2" be corrected as "0.061/2 acres."

E. That after end of Khata No. 46 plot No. 142 area 0.131/2 acre & before "Plot No. 238 area 0.12 acre" "Khata No. 47" be inserted.

F. That in Schedule "B", in Khata No. 50 plot No. 107 "area 0.21" be corrected as "0.06 acres".

G. That in Khata No. 54 plot No. 319 area "0.18 acre" be corrected as "area 0.201/2 acre" and plot No. 122 area "0.201/2 acre" be corrected as area "0.28 acre".

H. That in Khata No. 59, Plot No. 3 area 2.19 acre be corrected as 3.19 acre.

I. That Khata No. 59 be inserted in place of "Khata No. 79" plot No. 54 area 1.27 acre and the said Khata No. 79 be remained before plot No. 240 area 11.27 acre of the Schedule "B".

J. That in Schedule "B", under Khata No. 85 plot No. 17 "area 7.66 acre" be corrected as area "0.15 acres".

In the same Khata No. 85 plot No. 247 area "0.25 acre" be corrected as "0.22 acre" and in plot No. 0.36 acre be deleted and in its place area "0.26" acre be inserted.

In the end Khata No. 85 plot No. 21, area 6.05 acre, a new plot No. 65 area 2.30 acre be inserted.

K. That at the end of Schedule "B", a new Khata No. 82 plot No. 332 area 0.16 acre be inserted (included) in Schedule "B"

L. that a new Khata vide

Khata No.	Plot No.	Area
57	61	0.03
125	0.15	126
0.02	135	0.50
262	0.09	318
0.40	199	0.04

be inserted after Khata No. 82 and the same be included in Schedule "B".

3. The main contention raised by the private respondent/defendant No. 5 therein is that the amendment petition under order 6 Rule 17 is not maintainable either on law or on facts since plaintiff also has sought amendment to add new plots in the plaint which is not permissible since it will change the nature of the suit and the defendant/respondent herein will be highly prejudiced.

4. It has further been contended that earlier amendment petition was filed which was allowed by this Court and again the present amendment petition has been filed by the petitioner/plaintiff which is not permissible.

5. The learned Counsel for the petitioner submits that the court below failed to appreciate that the amendment petition was formal in nature and merely clerical errors were sought to be amended which will not cause any prejudice to the defendant in any way. It has also been contended that certain mistakes has been made due to typographical errors which has cropped in the plaint and needed to be corrected for proper adjudication of the case. It has further been submitted on behalf of the petitioner that the trial has not yet commenced and thus the amendment sought for by the petitioner/plaintiff were essential and will cause no prejudice to the defendant/respondent.

6. I have considered the pleadings, rival submission, the impugned order dated 22.3.2007 signed on 11.4.2007. I have also perused the prayer for amendment. The law with regard to the interpretation of order 6 Rule 17 after the amendment, is clear and well settled.

7. The reasoning and the ground for rejection of the amendment petition by the learned trial court also does not stand to reason when it holds that by allowing the amendment petition there will be hotch potch in the plaint and the addition of new Khata and Plot will prejudice the case of the defendant. The prayer in the amendment petition mostly relates to clerical errors and certain name, number and/ or plot number which does not change the nature of the suit or the plaint and the only addition is with regard to new plot and Khata number but the same is also prayed by way of an amendment to be inserted against defendant No. 5 itself for the same cause of action and for the same relief and thus it cannot be interpreted to have substantial change or to say that completely a new cause of action is sought for and / or prayed for by way of an amendment petition. The nature of the suit remains with regard to declaration of title.

8. The law in this regard is well settled and the Hon''ble Supreme court has time and again held that the yardstick to determine is as to whether the defendant will be prejudiced and by allowing the amendment it will change the nature of the suit itself giving a fresh cause of action. Thus the test is the substantial change sought for in an amendment petition which changed the nature of the suit.

9. The Hon''ble Supreme Court in North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das (D) by Lrs., at para-16 held as under:

16. In so far as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same

position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.

10. The Hon"ble Supreme Court in Usha Balashaheb Swami and Others Vs. Kiran Appaso Swami and Others, at para -18 held as under:

18. It is now well settled by various decisions of this Court as well as those by the High Courts that the courts should be liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side or on the ground that the prayer for amendment was not a bona fide one. In this connection, the observation of the Privy Council in Ma Shwe Mya v. Maung Mo Hnaung may be taken note of. The Privy Council observed: (IA pp. 216-17)

All rules of court are nothing but provisions intended to secure the proper administration of justice, and it is therefore essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject-matter of the suit.

11. In the instant case neither the prayer for amendment changes the nature of the suit nor the prayer in the suit, except for addition of two plots that also against same defendant itself and no prejudice can be caused to the defendant since the trial is yet to commence and thus by allowing the amendment petition it will facilitate the ends of justice and reduce the multiplicity of proceeding and the amendment is also proper if it is necessary for adjudication of the entire dispute between the parties.

12. Considering the aforesaid facts and circumstance of the case, this writ petition is allowed and the impugned order dated 22.3.2007 is quashed and the learned trial court is directed to allow the amendment as prayed for and the amended copy of the plaint be provided to the contesting defendant/respondent No. 5 herein.